

**CITY OF SANTA FE, NEW MEXICO**

**ORDINANCE NO. 2005-3**

**AN ORDINANCE**

**CREATING A NEW SECTION 13-2 SFCC 1987 REGARDING STORMWATER ILLICIT DISCHARGE CONTROL.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

**Section 1. A new Section 13-2 SFCC 1987 is ordained to read:**

**13-2 [NEW MATERIAL.] STORMWATER ILLICIT DISCHARGE CONTROL.**

**Section 2. A new Section 13-2.1 SFCC 1987 is ordained to read:**

**13-2.1 [NEW MATERIAL.] Title.**

Article 13-2 may be cited as the Stormwater Illicit Discharge Control Ordinance.

**Section 3. A new Section 13-2.2 SFCC 1987 is ordained to read:**

**13-2.2 [NEW MATERIAL.] Legislative Findings.**

The governing body of the city has determined that the federal Clean Water Act, 33 U.S.C. 1251 et seq., requires the city of Santa Fe, to implement a stormwater management plan to comply with stormwater discharge permits issued under the national pollutant discharge elimination system (NPDES), which includes the requirement to detect and eliminate illicit discharges of pollutants into the municipal storm drain (storm sewer) system

**Section 4. A new Section 13-2.3 SFCC 1987 is ordained to read:**

**13-2.3 [NEW MATERIAL.] Purpose.**

The purpose and intent of the Stormwater Illicit Discharge Ordinance is to protect and

1 enhance the water quality of watercourses and groundwater by prohibiting non-stormwater  
2 discharges to the city's storm drain system.

3 **Section 5. A new Section 13-2.4 SFCC 1987 is ordained to read:**

4 **13-2.4 [NEW MATERIAL.] Definitions.**

5 For the purpose of this Ordinance, the following definitions shall apply:

6 *Abate* means to bring to a halt, eliminate or, where that is not possible or feasible, to  
7 suppress, reduce, or minimize.

8 *City* means the city of Santa Fe.

9 *Clean Water Act* means the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.),  
10 and any subsequent amendments thereto.

11 *Hazardous material* means any material, including any substance, waste, or combination  
12 thereof, which because of its quantity, concentration, or physical, chemical, or infectious  
13 characteristics may cause, or significantly contribute to, a substantial present or potential hazard  
14 to human health, safety, property, or the environment when improperly treated, stored,  
15 transported, disposed of, or otherwise managed.

16 *Illicit discharge* means any direct or indirect non-stormwater discharge to the storm drain  
17 system that contains any pollutant(s).

18 *Illicit connection* means either of the following:

19 A. Any drain or conveyance, whether on the surface or subsurface, which allows an  
20 illicit discharge to enter the storm drain system including but not limited to any conveyances  
21 which allow any non-stormwater discharge including sewage, process wastewater, and wash  
22 water to enter the storm drain system and any connections to the storm drain system from indoor  
23 drains and sinks, regardless of whether said drain or connection had been previously allowed,  
24 permitted, or approved by a government agency; or

25 B. Any drain or conveyance connected from a commercial or industrial

1 establishment to the storm drain system which has not been documented in plans, maps, or  
2 equivalent records and approved by the city.

3 *NPDES stormwater discharge permits* mean general, group, and individual stormwater  
4 discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the  
5 Clean Water Act.

6 *Pollutant* means anything which causes or contributes to pollution. Pollutants may  
7 include, but are not limited to: Paints, varnishes, and solvents; oil, anti-freeze, and other  
8 automotive fluids; non-hazardous liquid and solid wastes and yard wastes; branches, trimmings,  
9 refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and  
10 accumulations, so that same may cause or contribute to pollution; floatables; pesticides,  
11 herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and  
12 pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from  
13 constructing or remodeling a building or structure (including but not limited to sediments,  
14 slurries, mud, plasters, and concrete rinsates); and noxious or offensive matter of any kind.

15 *Pollution* means the human-made or human-induced alteration of the quality of waters by  
16 waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either  
17 the waters for beneficial uses or the facilities which serve these beneficial uses.

18 *Premises* means any lot or combination of contiguous lots held in single ownership and  
19 the buildings, structures or other appurtenances thereon.

20 *Storm drain system* means publicly-owned facilities and appurtenances operated by the  
21 city by which stormwater is collected and/or conveyed, including but not limited to any roads  
22 with drainage systems, municipal streets, curbs, gutters, drop inlets, piped storm drains (culverts),  
23 pumping facilities, retention and detention basins, natural and human-made or altered drainage  
24 channels and arroyos, reservoirs, and other drainage structures which are within the city and are  
25 not part of a publicly owned treatment works as defined at 40 CFR 122.2.

1           *Stormwater* means any surface flow, runoff, snow melt, and drainage consisting entirely  
2 of water from rain and snow storm events.

3           *Waters of the United States* means surface watercourses and water bodies as defined at 40  
4 CFR 122.2, including all natural waterways, channels, and depressions in the earth that may carry  
5 water, even though such waterways may only carry water during rain and snow storms and may  
6 not carry stormwater at and during all times and seasons.

7           **Section 6.       A new Section 13-2.5 SFCC 1987 is ordained to read:**

8           **13-2.5 [NEW MATERIAL.] Responsibility for Administration.**

9           The city shall administer, implement, and enforce the provisions of this Ordinance. Any  
10 powers granted or duties imposed upon the city may be delegated in writing by the city to persons  
11 or entities acting in the beneficial interest of or in the employ of the city.

12          **Section 7.       A new Section 13-2.6 SFCC 1987 is ordained to read:**

13          **13-2.6 [NEW MATERIAL.] Prohibition of Illicit Discharges.**

14          A.       No person shall discharge or cause to be discharged any direct or indirect non-  
15 stormwater discharge to the storm drain system that contains any pollutants that cause or  
16 contribute to a violation of local, state or federal water quality standards.

17          B.       Discharges from the following activities will not be considered a source of  
18 pollutants to the storm drain system and to waters of the U.S. when properly managed to ensure  
19 that no potential pollutants are present, and therefore they shall not be considered illicit  
20 discharges unless determined to cause a violation of the provisions of the Clean Water Act, state  
21 law or this Ordinance:

22                   (1)       Water line flushing;

23                   (2)       Uncontaminated pumped groundwater and other discharges from potable  
24 water sources;

25                   (3)       Landscape irrigation and lawn watering;

- (4) Rising groundwater;
- (5) Uncontaminated groundwater infiltration to the storm drain system;
- (6) Uncontaminated foundation drains;
- (7) Uncontaminated water from crawl space pumps;
- (8) Air conditioning condensation;
- (9) Uncontaminated non-industrial roof drains;
- (10) Springs;
- (11) Individual residential car washing;
- (12) Flows from riparian habitats and wetlands; or
- (13) Dechlorinated swimming pool discharges; street wash waters; and flows from fire fighting.

C. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the federal environmental protection agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. If requested, a copy of said NPDES permit, waiver, or waste discharge order shall be provided to the city within ten (10) days of request.

**Section 8. A new Section 13-2.7 SFCC 1987 is ordained to read:**

**13-2.7 [NEW MATERIAL.] Prohibition of Illicit Connections.**

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

**Section 9. A new Section 13-2.8 SFCC 1987 is ordained to read:**

**13-2.8 [NEW MATERIAL.] Waste Disposal Prohibitions.**

1 No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited,  
2 left, or maintained, in or upon any component of the storm drain system, or water of the U.S., any  
3 pollutant.

4 **Section 10. A new Section 13-2.9 SFCC 1987 is ordained to read:**

5 **13-2.9 [NEW MATERIAL.] Watercourse Protection.**

6 Every person owning property through which a watercourse passes, or such person's  
7 lessee, shall keep and maintain that part of the watercourse within the property reasonably free of  
8 trash, debris, excessive vegetation, and other substances that would pollute, contaminate,  
9 obstruct, or significantly retard the flow of water through the watercourse. In addition, the owner  
10 or lessee shall maintain existing privately owned structures within or adjacent to a watercourse,  
11 so that such structures will not become a hazard to the use, function, or physical integrity of the  
12 watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually  
13 necessary for maintenance, nor remove said vegetation in such a manner as to increase the  
14 vulnerability of the watercourse to erosion. The property owner shall be responsible for  
15 maintaining and stabilizing that portion of the watercourse that is within their property lines in  
16 order to protect against erosion and degradation of the watercourse originating or contributed  
17 from their property.

18 **Section 11. A new Section 13-2.10 SFCC 1987 is ordained to read:**

19 **13-2.10 [NEW MATERIAL.] Requirement to Notify the City of Spills.**

20 Notwithstanding other requirements of law, as soon as any person responsible for a  
21 facility or operation, or responsible for emergency response for a facility or operation has  
22 information of any known or suspected release of materials which are resulting or may result in  
23 illicit discharges or pollutants discharging into stormwater, the storm drain system, or water of the  
24 U.S. from said facility, said person shall take all necessary steps to ensure the discovery,  
25 containment, and cleanup of such release. In the event of such a release of a hazardous material

1 said person shall immediately notify emergency response officials of the occurrence. In the event  
2 of a release of non-hazardous materials, said person shall notify the city's public works  
3 department in person or by phone or facsimile no later than 5:00 p.m. of the next business day.  
4 Notifications in person or by phone shall be confirmed by written notice addressed and mailed to  
5 the city's public works department within three business days of the phone notice. If the  
6 discharge of prohibited materials emanates from a commercial or industrial establishment, the  
7 owner or operator of such establishment shall also retain an on-site written record of the  
8 discharge and the actions taken to prevent its recurrence. Such records shall be retained for at  
9 least three years.

10 **Section 12. A new Section 13-2.11 SFCC 1987 is ordained to read:**

11 **13-2.11 [NEW MATERIAL.] Authority to Inspect.**

12 Whenever necessary to make an inspection to enforce any provision of this Ordinance, or  
13 whenever the city has probable cause to believe that there exists any condition which constitutes a  
14 violation of this Ordinance, the city may enter such premises at all reasonable times to inspect the  
15 same and to inspect and copy records related to stormwater discharge compliance. In the event  
16 the owner or occupant refuses entry after a request to enter and inspect has been made, the city is  
17 hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such  
18 entry.

19 **Section 13. A new Section 13-2.12 SFCC 1987 is ordained to read:**

20 **13-2.12 [NEW MATERIAL.] Authority to Sample, Establish Sampling Devices,**  
21 **and Test.**

22 During any inspection as provided herein, the city may take any samples and perform any  
23 testing deemed necessary to aid in the pursuit of the inquiry or to record site activities. In the  
24 event the owner or occupant denies permission to sample, establish sampling devices, and test,  
25 the city is hereby empowered to seek assistance from any court of competent jurisdiction in

obtaining such samples, sampling devices, or tests.

**Section 14. A new Section 13-2.13 SFCC 1987 is ordained to read:**

**13-2.13 [NEW MATERIAL.] Requirement to Eliminate Illicit Discharges.**

The city may require by written notice that a person responsible for an illicit discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illicit discharges.

**Section 15. A new Section 13-2.14 SFCC 1987 is ordained to read:**

**13-2.14 [NEW MATERIAL.] Requirement to Eliminate Illicit Connections.**

The city may require by written notice that a person responsible for an illicit connection to the storm drain system comply with the requirements of this Ordinance to eliminate the connection by a specified date.

**Section 16. A new Section 13-2.15 SFCC 1987 is ordained to read:**

**13-2.15 [NEW MATERIAL.] Violations; Penalties, and Enforcements.**

A. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the Illicit Discharge Control Ordinance. Each day the violation continues shall be considered a separate offense.

B. Whenever the city finds that a person has violated or is violating a requirement of the Ordinance, the city may:

- (1) Issue a written notice of violation;
- (2) File a citation in municipal court as set forth in Section 1-3 SFCC 1987;
- (3) Commence a civil action in district court for appropriate relief, including injunctive relief;
- (4) Determine that the violation is a threat to public health, safety, and welfare and is therefore declared a nuisance, and as such may be abated as set forth elsewhere in this Code.



1 C. A notice of violation shall state with reasonable specificity the nature of the  
2 violation and set forth a deadline for correction of the violation pursuant to the requirements set  
3 forth in the notice. The notice shall further advise that, should the violator fail to correct the  
4 violation pursuant to the requirements, the city will take any and all measures necessary to abate  
5 the violation and and/or restore the property and the expense thereof shall be charged to the  
6 violator pursuant to Section 13-2.17 SFCC 1987.

7 **Section 17. A new Section 13-2.16 SFCC 1987 is ordained to read:**

8 **13-2.16 [NEW MATERIAL.] Abatement by City.**

9 If after the notice is issued, the violation has not been corrected pursuant to the  
10 requirements set forth in said notice, the city or a contractor, designated by the city, shall request  
11 permission to enter upon the subject private property and if granted, is authorized to take any and  
12 all measures necessary to abate the violation and/or restore the property. In the event the owner  
13 or occupant refuses entry after a request to enter and abate has been made, the city is hereby  
14 empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

15 **Section 18. A new Section 13-2.17 SFCC 1987 is ordained to read:**

16 **13-2.17 [NEW MATERIAL.] Charging Cost of Abatement/Liens.**

17 Within 30 days after abatement of the violation by the city, the city shall notify the owner  
18 of the property of the cost of abatement, including administrative costs. If the amount due is not  
19 paid within 10 days, the charges shall become a special assessment against the property and shall  
20 constitute a lien on the property for the amount of the assessment. The city may assess a fee for  
21 the placement of the lien.

22 **Section 19. A new Section 13-2.18 SFCC 1987 is ordained to read:**

23 **13-2.18 [NEW MATERIAL.] Exigent Circumstances Abatement.**

24 The city, pursuant to its police powers, is authorized to require immediate abatement of  
25 any violation of this Ordinance that constitutes an immediate threat to the health, safety or well-

1 being of the public. If any such violation is not abated immediately as directed by the city, the  
2 city and/or its agents are authorized to enter onto private property and to take any and all  
3 measures required to remediate the violation for the protection of the community. Any expense  
4 related to such remediation undertaken by the city shall be fully reimbursed by the property  
5 owner and/or responsible party. Any relief obtained under this Ordinance shall not prevent the  
6 city from seeking other and further relief authorized under this Ordinance.

7 **Section 20. A new Section 13-2.19 SFCC 1987 is ordained to read:**

8 **13-2.19 [NEW MATERIAL.] Severability.**

9 The requirements and provisions of this Ordinance and their parts, subparts and clauses  
10 are severable. In the event that any requirement, provision, part, subpart or clause of this  
11 Ordinance, or the application thereof to any person or circumstance, is held by a court of  
12 competent jurisdiction to be invalid or unenforceable, it is the intent of the governing body that  
13 the remainder of the Ordinance be enforced to the maximum extent possible consistent with the  
14 governing body's purpose of detecting and eliminating illicit discharges.

15 PASSED, APPROVED, and ADOPTED this 23rd day of February, 2005.

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19 LARRY A. DELGADO, MAYOR  
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22 ATTEST:  
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25 YOLANDA Y. VIGIL, CITY CLERK

1 APPROVED AS TO FORM:

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4 BRUCE THOMPSON, CITY ATTORNEY

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25 Jp/cmassign/stormwater/illicitdischarge ord